

IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 03.03.2021

+ **CRL. A. 1181/2017 and CRL. M. (BAIL) 7856/2020**

SHEETAL

.....Appellant

Versus

THE STATE GOVT. OF NCT OF DELHI

..... Respondent

Advocates who appeared in this case:

For the Appellant :Mr Amar Phogat, Advocate.

For the Respondent :Mr Amit Gupta, APP for State.

AND

+ **CRL. A. 50/2018**

RAKESH KUMAR DAHIYA

.....Appellant

Versus

STATE

..... Respondent

Advocates who appeared in this case:

For the Appellant :Mr Sunil Mehta, Ms Surbhi Mehta and Mr
Ashwin Kumar DS, Advocates

For the Respondent :Mr Amit Gupta, APP for State.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The appellants have filed the present appeal impugning a judgment dated 01.11.2017, whereby the accused Sheetal (the appellant

in CRL. A. 1181/2017) was convicted of committing an offence punishable under Sections 21(b) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereafter the 'NDPS Act'). The accused Rakesh Dahiya (the appellant in CRL. A. 50/2018) was convicted of an offence punishable under Sections 25 and 29 of the NDPS Act. The appellants also impugn a common order of sentence dated 16.11.2017, whereby the accused Sheetal was sentenced to serve five years of rigorous imprisonment along with a fine of ₹25,000/- and in default of payment of fine, to undergo rigorous imprisonment for a period of six months for committing an offence punishable under Section 21(b) of the NDPS Act. In addition, she was also sentenced to five years rigorous imprisonment with a fine of ₹25,000/- and in default of payment of fine, to undergo rigorous imprisonment for a period of six months for committing an offence punishable under Section 29 of the NDPS Act. It was directed that both the sentences would run concurrently.

2. The accused (Rakesh Dahiya) was sentenced to five years of rigorous imprisonment along with a fine of ₹25,000/- and in default of payment of fine, to undergo rigorous imprisonment for a period of six months for committing an offence punishable under Section 25 of the NDPS Act. He was awarded a similar sentence for committing an offence under Section 29 of the NDPS Act. It was directed that both the sentences would run concurrently.

3. The appellants were prosecuted pursuant to registration of an FIR No. 114/2012 under Sections 21 and 29 of the NDPS Act with PS Crime Branch.

4. It is the prosecution's case that secret information was received by the investigating officer (Paramjeet Singh), Narcotic Cell, Crime Branch on 23.04.2012 at about 12:30 p.m. to the effect that one person named Rakesh Dahiya, who was a resident of village Shahpur Jat would arrive that day at about 02:30 p.m. to 03:30 p.m. in his car bearing registration No. DL 8CT 3159 on the road leading towards Krishna Nagar, opposite Iris Hotel, Safdarjung Enclave, Delhi for taking delivery of cocaine from one Nigerian woman. The informant stated that Rakesh Dahiya has some base in Malviya Nagar and indulges in supply of cocaine to his customers outside Delhi after purchasing the same from one Nigerian National. Pursuant to the said secret information, a raiding team was constituted by the officials of the Crime Branch. The said raiding team led by SI Paramjeet Singh, reached the spot at about 02:30 p.m. and took up position there. It is stated that at about 02:55 p.m., one golden coloured car (Hyundai I20 bearing registration No. DL 8CT 3159) was seen arriving from the direction of Kamal Cinema. The car was being driven at a slow speed and it turned towards Krishna Nagar and stopped. The person driving the said car was identified by the informer as the accused Rakesh Dahiya and the woman sitting next to him was identified as Sheetal. In the meanwhile, one Nigerian Lady (Giwa Kadeejat) also reached the spot from the direction of Krishna Nagar and stopped near the car. The accused got

down from the car and proceeded to meet the accused Giwa Kadeejat. Giwa Kadeejat took out a small packet from her handbag and handed it over to the accused Sheetal. Sheetal accepted the same and kept it in her purse which she was carrying in her hand. She also took out ₹20,000/- from her purse and handed it over to the accused Giwa Kadeejat. At that stage, the members of the raiding team surrounded the said accused and apprehended Sheetal and Giwa Kadeejat. However, the accused Rakesh Dahiya fled from the spot in his car.

5. According to the prosecution, the provisions of Section 50 of the NDPS Act were complied with and the said accused were informed about their legal right to be searched in the presence of a Magistrate or a Gazetted Officer. However, they declined to be searched in the presence of a Magistrate or a Gazetted Officer. The said accused were searched and ten grams of cocaine was recovered from the possession of accused Sheetal. Forty grams of cocaine was recovered from Giwa Kadeejat. In addition, ₹20,000/- was also recovered from her handbag.

6. According to the prosecution, IO/SI Paramjeet Singh drew two samples of two grams each from the substance recovered from the accused Sheetal and tied the same in small pouches. The same were converted into *pullandas* marked as D and E. The said *pullandas* were sealed with the seal of 8APSNB Delhi and the remaining substance was kept in the semi-transparent polythene and was tied with the rubber band. The same was converted into a cloth *pullanda* and sealed with

the seal of 8APSNB Delhi. The FSL Form was filled up and the same seal was also affixed on it.

7. Similarly, samples were also drawn from the alleged contraband recovered from the accused Giwa Kadeejat. Thereafter, a *rukka* was prepared and was handed over to HC Sanjeev Kumar along with six parcels (*pullandas*). Two *pullandas* containing the samples drawn from the substance recovered from the accused Giwa Kadeejat, as well as, two *pullandas* containing the samples drawn from the substance recovered from the accused Sheetal and, the two *pullandas* containing the remaining substance were also handed over to HC Sanjeev Kumar along with the FSL Forms and seizure memos. He proceeded to PS Crime Branch and handed over the *pullandas*, FSL Forms and copies of the seizure memos to the SHO. He handed over the *rukka* to the Duty Officer who got the FIR in question registered.

8. According to the prosecution, the SHO checked the seals on the *pullandas* and thereafter, affixed his own seal of 'BKB' on each *pullanda* and on both FSL forms. He also endorsed the same with the FIR Number. Thereafter, he called the MHC(M) to his office and handed over the case property to him. The MHC(M) entered the same in the Register (Register No. 19) in the office of the SHO and thereafter, deposited the case property in the *malkhana*.

9. HC Sanjeev Kumar and ASI Mahender Singh left the police

station after registration of the FIR and proceeded to the Narcotic Cell. Thereafter, HC Sanjeev Kumar handed over the FIR and the original *rukka* to ASI Mahender Singh. ASI Mahender Singh along with HC Rajesh and SI Paramjeet Singh left the office and reached the spot. At the spot, SI Paramjeet Singh handed over the custody of Giwa Kadeejat and Sheetal along with the documents. ASI Mahender Singh prepared a site plan at the instance of SI Paramjeet Singh.

10. Thereafter, the accused Giwa Kadeejat was arrested and the arrest memo (Ex.PW9/D) was prepared. Currency notes recovered from the possession of Giwa Kadeejat were kept in a cloth *pullanda* and sealed with the seal of 5APSNB Delhi. The said *pullanda* was marked as G.

11. The accused Giwa Kadeejat was searched and a carbon copy of the notice under Section 50 of the NDPS Act, one handbag containing some documents, and two small purses (one black coloured and the other red coloured) containing ₹880/-, one key, metro card, passport and a mobile phone were recovered. The disclosure statement of Giwa Kadeejat was recorded (Ex.PW9/E).

12. The accused Sheetal was also interrogated and arrested. She was also searched and a carbon copy of the notice under Section 50 of the NDPS Act, a purse containing ₹2,690/-, some documents, keys, eight golden coloured rings, two golden earrings, two golden coloured chains, two locketts and one *mangalsutra* were recovered. The said case

properties were converted into a *pullanda* and the same were sealed with the seal of 5APSNB Delhi. The disclosure statement of the accused Sheetal was recorded (Ex.PW9/G).

13. On 26.04.2012, samples marked as A and B along with the FSL Form and road certificate were handed over to HC Manjeet Singh who deposited the same with FSL Rohini. The FSL report indicates that the said samples were found containing 25.5 per cent and 22.5 per cent cocaine respectively. The said report was marked as Ex.PW18/F. After completion of the investigation, a chargesheet was filed against Giwa Kadeejat and Sheetal. Thereafter, on 13.07.2012 a supplementary chargesheet was filed against the accused Rakesh Dahiya. Thereafter, the accused were charged. The accused Sheetal was charged for committing an offence under Section 21 and 29 of the NDPS Act. The accused Rakesh Dahiya was charged with committing an offence under Section 25 and 29 of the NDPS Act. It was alleged that he was the owner of the vehicle bearing registration No. DL 8CT 3159 and had knowingly used the same for committing an offence under Section 25 of the NDPS Act. Rakesh Dahiya was also charged with criminal conspiracy to deal with contraband substances.

14. After the prosecution evidence was closed, Giwa Kadeejat absconded. She was declared a proclaimed absconder and has not been apprehended as yet.

15. The learned Special Judge evaluated the testimony and the evidence led by the prosecution and found that the charge against the appellants was proved. Accordingly, the appellants were convicted by the impugned judgment.

Evidence

16. To establish its case the prosecution had examined twenty-three witnesses. The evidence of the witnesses that were a part of the raiding team as well as those who conducted the investigation after, are relevant and briefly noted below.

17. SI Paramjeet Singh was examined as PW9. He testified as to the receipt of the secret information from the informer. He stated that he recorded the said information as DD No. 15 at about 01:00 p.m. on the same date, that is, 23.04.2012, (Ex.PW9/A). The said information was produced before Inspector Kuldeep Singh in compliance with the provisions of Section 42 of the NDPS Act. He had, thereafter, constituted a raiding party which consisted of HC Sanjeev Kumar, HC Harender, Ct. Manjeet, Lady Ct. Rekha and the raiding team was apprised about the above information. He testified that Inspector Kuldeep Singh had also informed ACP Narcotic Cell (Sh. Bir Singh) regarding the above information and after being satisfied regarding the same, ACP Bir Singh had directed him for taking appropriate action on the said information. He testified that he had taken his IO Bag, Field

Testing Kit and an electronic scale and had left the office in a private Scorpio bearing registration No. DL 4CNB 2965 driven by Ct. Paramjeet. The departure was entered as DD No. 16 at about 01:30 p.m. (Ex.PW9/D). He stated that on the way to the spot, they had stopped the vehicle at three places (ITO Bus Stop, INA Market Bus Stop and the Bus Stop outside the Safdarjung Hospital) and he had requested five to six persons at each of the said places for joining the raiding team but all of them had refused to do so. He testified that on reaching the spot, he had parked his Scorpio Car at a distance of about 50 meters on the road leading towards Krishna Nagar and had briefed all members of the raiding team. He had also deposed as to the manner in which the positions were taken by the raiding team. He stated that at about 02:55p.m., he saw a Hyundai I20 car of golden colour coming from the side of Kamal Cinema at a slow speed. The car turned towards Krishna Nagar after crossing them. The informer had pointed out the said car. The said vehicle stopped at a distance of about fifty-twenty steps from where he was positioned. He testified that the informer had identified the driver of the said vehicle as Rakesh Dahiya and the woman sitting next to him as Sheetal. Sheetal had got down from the car and in the meanwhile, one Nigerian Lady had also reached the spot. She was on foot and was walking from the direction of Krishna Nagar. She approached Sheetal and handed her over something. Sheetal took the same and also handed over some currency notes which she took out from her purse. He testified that some currency notes were taken from Rakesh. He stated that as soon as they approached them, Rakesh fled from the spot in his car and, therefore, they were not able to apprehend

him. However, they apprehended Sheetal and the Nigerian Lady. He also identified Sheetal and the Nigerian Lady (Giwa Kadeejat) in Court. SI Paramjeet testified that he had explained the legal rights to accused (Sheetal and Giwa Kadeejat). He testified that he had informed them that if they desired, their search could be conducted before a Gazetted Officer or a Magistrate and they also had the right to search the police officials. He testified that he served the written notices under Section 50 of the NDPS Act (Ex.PW4/A and Ex.PW4/B). The carbon copies of the said notices were handed over to the accused. The accused refused to exercise their legal rights. He testified that the accused Giwa Kadeejat recorded the same in her writing on the original notice. However, they refused Sheetal to exercise her legal rights were recorded by him as she had informed him that she did not know how to write the same. He stated that thereafter, he instructed Ct. Rekha to search Giwa Kadeejat after making her sit in the private Scorpio car. He testified that Ct. Rekha handed over a white coloured semi-transparent polythene containing some white coloured powdery substance and informed him that the same was recovered from the purse of Giwa Kadeejat. The polythene was found tied with the rubber band. He stated that the rubber band was removed and a pinch of the above powder was tested with the help of a field testing kit and the same gave a positive result for cocaine. He stated that he weighed the said substance on an electronic weighing scale and found that the same weighed forty grams (including the semi-transparent polythene). He stated that he drew two grams of cocaine from the recovered substance and kept the same in two polythene pouches which were converted into two *pullandas*

marked as A and B. The said *pullandas* were then sealed with the official seal of 8APSNB Delhi. He stated that the recovered substance was converted into a cloth parcel marked as C. The same was also sealed with the same seal. He further testified that he filled up the FSL Forms and affixed the seal of 8APSNB Delhi on those forms.

18. He testified that he gave similar directions to Ct. Rekha for searching the accused Sheetal. She was also searched inside the private vehicle Scorpio. After her search, Ct. Rekha handed over one white coloured semi-transparent polythene containing some white colour powdery substance and informed him that the same had been recovered from the accused Sheetal. The above polythene was tied with the rubber band. He stated that he removed the rubber band and took out a pinch of the powder and tested the same with the help of a field testing kit. The same yielded a positive result for cocaine. He stated that he weighed the same on the electronic weighing scale and found that the said substance weighed ten grams along with the semi-transparent polythene. He drew two samples of two grams each from the said substance and kept them in separate transparent polythene pouches which were converted into two *pullandas* marked as Marked D and E. The remaining substance was put back in the same polythene from which it was recovered and converted into a cloth parcel marked as F. He also testified that he filled up the FSL Form and sealed it with the seal of 8APSNB Delhi. The said seal was also imprinted on the FSL Form. He testified that he seized the said parcels and he identified his signatures on the seizure memo (Ex.PW4/F). He testified that thereafter,

he prepared a *rukka* (Ex.PW9/C) and he handed it over to HC Sanjeev Kumar for registration of the FIR. He also handed over carbon copies of the seizure memos, FSL Forms and the cloth *pullandas* to HC Sanjeev with the direction to go to the police station and to hand over the *rukka* to the DO for registration of the FIR and to hand over the seizure memos, FSL Forms as well as the cloth parcels to the SHO. He testified that HC Sanjeev left the spot in the private Scorpio car which was driver by Ct. Paramjeet. He stated that at about 10:00 p.m. ASI Mahender Singh along with HC Rajesh and Driver Ct. Paramjeet came to the spot and the further investigation was marked to ASI Mahender Singh. He stated that he handed over the original seizure memos, the original notices under Section 50 of the NDPS Act with the reply of the accused thereon to ASI Mahender Singh. He testified that ASI Mahender Singh prepared a site plan (Ex.PW4/DA) at his instance and also recorded the statement of Ct. Rekha. He stated that Giwa Kadeejat was arrested at about 12:05 a.m. by ASI Mahender Singh vide arrest memo Ex.PW9/D. He identified his signatures on the same. He also stated that ₹ 20,000/- (forty currency notes of denomination of ₹500/- each) were recovered from the possession of the accused Giwa Kadeejat. ASI Mahender Singh kept the same in a cloth parcel and sealed the same with the seal of 5APSNB Delhi. He also prepared a seizure memo (Ex.PW4/G). A formal search was conducted by Ct. Rekha. On searching Giwa Kadeejat, one carbon copy of the notice under Section 50 of the NDPS Act, one black coloured purse containing loose items, papers, visiting cards, one small red coloured purse, one black coloured purse containing ₹880/-, one metro card, medicine

wrappers, loose papers, house keys, one passport and one mobile phone were recovered. He testified that ASI Mahender Singh also recorded her disclosure statement (Ex.PW9/D).

19. PW9 testified that at about 01:00 am, the accused Sheetal was arrested by ASI Mahender Singh. He identified his signatures on her arrest Memo (Ex.PW9/F). He testified that she was searched by Ct. Rekha. He identified his signatures on the search memo (Ex.PW4/I). He testified that on the personal search of the accused Sheetal, one carbon copy of the notice under Section 50 of the NDPS Act, eight golden rings, two gold earrings, two golden colour chain with lockets, one mangalsutra, one black coloured purse containing ₹2690/-, some visiting cards, some loose papers, pan cards, and house keys were recovered. All of the golden coloured articles were kept in a cloth *pullanda* and sealed with the seal of 5APSNB Delhi. He testified that ASI Mahender Singh also recorded her disclosure statement (Ex.PW9/G).

20. HC Sanjeev Kumar was examined as PW-12 and he stated that he had taken the *rukka* for registration of the FIR. He was part of the raiding team and his narration of the events leading to the apprehension of the accused and proceedings thereafter was consistent with the testimony of PW-9. He testified that he had left the spot at around 07:00 p.m. and reached PS Crime Branch at 07:30 pm. He had handed over the *rukka* to the duty officer and handed over the sealed

parcels/pullandas, two FSL forms and two carbon copies of the seizure memos to the SHO, PS Crime Branch. He testified that the SHO called the MHCM inside his office along with Register no.19 and deposited the case properties in the *malkhana*. He testified that, thereafter, he collected the copy of the FIR and original *rukka* and handed over the same to ASI Mahender Singh after reaching the Narcotic Cell. He deposed that on 25.04.2016, ASI Mahender Singh recorded his statement under Section 161 of the Cr.PC. He deposed that 29.04.2012, he once again joined investigation and reach Khirkhi Extn. Malviya Nagar, where he met the owner of the rented house of Sheetal (appellant no. 1) and Rakesh (appellant no. 2). Copy of the rent agreement and tenant verification form was seized vide seizure memo – Ex. PW7/A.

21. In his cross-examination, PW-12 stated that no specific address of the hideout in Malviya Nagar of the accused Rakesh was told them by the IO. The name/addresses of the persons from whom the accused used to procure drugs was also not informed by the informer. He stated that he did not carry his mobile phone on the day of the raid. He stated that they did not try to chase the vehicle.

22. Ct. Rekha, who was also a member of the raiding team, was examined as PW-4. Her testimony is also consistent with the testimony of PW-9 and PW-12.

23. Inspector BK Badola deposed as PW-1. He deposed that on 23.04.2012, at about 07:35 pm, HC Sanjeev came to his office and produced six sealed *pullandas*, two FSL forms and two copies of the seizure memos. He confirmed that all *pullandas* and FSL forms had the seal 8APS Delhi and later affixed one seal impression of his seal 'BKB' on each *pullanda* and both FSL forms. He then called MHC (M) HC Jag Narain (PW-2) with register no. 19 and enquired from the duty officer the FIR No. which was 114/12 and put the number on the *pullandas*, the FSL forms and copies of the seizure memos. The same was then handed over to the MHC (M) and were deposited in the *malkhana*. He stated that HC Jag Narain (PW-2) then made an entry in register no. 19 which was signed by him. Thereafter, ASI Mahender recorded his statement at about 02:10 am.

24. HC Jag Narain deposed as PW-2. He deposed that on 23.04.2012, he was working as MHC(M) in PS Crime Branch, Malviya Nagar. He stated that Inspector BK Badola (PW-1) had handed over to him six sealed *pullandas*, two FSL forms and two copies of the seizure memo and had directed him to deposit the documents in the *malkhana*. He stated that he deposited the documents in *malkhana* vide entry no. 1401 in register no. 19 (Ex. PW2/A). He stated that in the same night, ASI Mahender Singh had handed over to him personal search articles and sealed *pullanda* of currency notes with seal 5APS NB Delhi, and was deposited vide entry no. 1402 of *malkhana* (Ex. PW2/B). He stated that on 15.06.2012, SI Bhagwan Singh had deposited car no. DL 8CT 3159 make i-20, in the *malkhana* vide entry no. 1528 in register no. 19 (Ex.

PW2/C). He stated that on 26.04.2012, he further received two more sealed *pullandas* along with two FSL forms through Ct. Manjeet Singh vide RC No. 234/21 (Ex. PW2/D). He also stated that on 19.06.2012, the result of the case was received from the office of the FSL and was then given to the IO for filing in the court.

25. Mr Bir Singh testified as PW-13. He stated that on 23.04.2012, he was working as ACP, Narcotics Cell, Crime Branch. He testified that at about 12:45 p.m., Inspector Kuldeep Singh came to his office and informed him that one Rakesh Kumar Dahiya who is resident of Village Shahpur Jat was dealing in supply of Cocaine in the outer periphery of Delhi, after procuring the same from a Nigerian lady. He was also informed that between 02:30 p.m. to 03:00 p.m., the said Nigerian lady would supply cocaine to the accused Rakesh Kumar Dahiya near Irish Hotel, Safdarjung Enclave and that the accused Rakesh Kumar would be coming in his car bearing registration no. DL 8CT 3159. He stated that he received the information under Section 42 of the NDPS Act vide diary no. 918 (Ex. PW3/A) on 23.04.2012. He testified that on 24.04.2012, HC Om Prakash had put two reports under Section 57 of the NDPS Act before him and were duly forwarded by Inspector Narcotic Cell, Kuldeep Singh vide diary no. 939 (Ex. PW3/B) and diary no. 940 (Ex. PW3/C). He also stated that on 15.06.2012, the information under Section 57 of the NDPS Act concerning the arrest of the accused Rakesh Kumar vide diary no. 1455 (Ex. PW3/D) was also put before him. He deposed that he did not verify the information which he had received vide the above DD under Section 42 of the NDPS Act. He

stated that during the raid, no information was received or obtained from the concerned official, however, after completion of the investigation, information under Section 57 of the NDPS Act about search and seizure was received in his office.

26. Inspector Bhagwan Singh deposed as PW-18. He stated that on 14.05.2012, further investigation of the case was handed over to him. He collected the CDR of the mobile phone number 8587079057 of Giwa Kadeejat and 9810652224 of Rakesh Kumar Dahiya. He stated that he collected the details of the CDRs along with a certificate under Section 65-B of the Indian Evidence Act, 1872 from the concerned service provider of the mobile phone numbers of Giwa Kadeejat and Rakesh Kumar. He stated that the mobile phone number 8587079057 of the accused Giwa Kadeejat was found in the name of Sh. Ravi Ranjan, who was a resident of Baljeet Nagar. He stated that on 23.07.2012, at about 03:00 p.m., he found the position of Giwa Kadeejat and Rakesh Kumar at the place of occurrence, i.e. near Safdarjung Enclave, opposite Iris Hotel, New Delhi. He testified that on 29.05.2012, he obtained the NBWs against the accused Rakesh Kumar Dahiya from the concerned court. Thereafter, on 04.06.2012, he prepared a charge-sheet against the accused persons Giwa Kadeejat and Sheetal. He stated that on 14.06.2012, on receipt of DD no. 5 (Ex. PA) under Section 41 of the NDPS Act, he along with HC Kanwal Singh departed towards the concerned court, where the accused Rakesh Kumar was produced by ASI Suresh Kumar. He stated that after obtaining permission from the court, he interrogated the accused and

arrested him vide arrest memo (Ex. PW18/A) and also recorded his disclosure statement (Ex. PW18/B). Thereafter, he collected the arrest memo, personal search memo and disclosure statement of the accused Rakesh Kumar from ASI Suresh Kumar.

27. PW-18 deposed that on 14.06.2012, he had moved an application before the concerned court for two days of police custody of the accused Rakesh Kumar, which was granted. Thereafter, he along with HC Kanwal Singh and the accused Rakesh Kumar reached the place of occurrence and prepared a pointing out memo (Ex. PW18/C). As per the disclosure statement of the accused Rakesh, he had stated that he threw the SIM card after breaking his phone on the date of occurrence (23.04.2012) at Aurobindo Marg, near IIT Gate flyover. He stated that the accused took him to the spot, however, the search was in vain. Thereafter, he prepared a pointing out memo of the above spot (Ex. PW18/D). A special report under Section 57 of the NDPS Act (Ex. PW3/D-1) regarding the arrest of the accused Rakesh Kumar was duly forwarded by Inspector Kuldeep Singh to the concerned ACP.

28. PW-18 deposed that for further investigation, he reached the residence of the accused Rakesh Kumar at 190-A, Shahpur Jat Village, New Delhi, where he found the car bearing no. DL 8CT 3150 (make i-20 golden colour car). The same was taken into possession vide seizure memo (Ex. PW18/E). He stated that on 30.06.2012, MHC (M) had handed over the FSL result (Ex. PW18/F) to him, which was prepared

by Dr Kanak Lata Verma (Senior Scientific Officer, Chemistry). He also stated that he obtained the CDR of mobile phone number 9560187460, which was being used by one Ade (as disclosed by the accused), who used to supply the contraband through the accused Giwa Kadeejat to the accused Rakesh Kumar. The said mobile number was found to be in the name of Ms Meenu Tangri. He inquired from Ms Meenu Tangri, who stated that she neither used this mobile number nor she got this number issued in her name. He deposed that during the investigation, he had recorded the statements of the Nodal Officers of Vodafone and Airtel. He stated that he prepared a supplementary charge sheet and the same was filed before the concerned courts.

29. HC Kanwal Singh testified as PW-22. He had joined the investigation with SI Bhagwan Singh (PW-18) and his testimony is on the same footing as of SI Bhagwan Singh (PW-18).

30. ASI Suresh Kumar deposed as PW-20. He deposed that on 13.06.2012, he was posted at SIT Crime Branch, Sector-18, Rohini. He deposed that on that day, one secret informer came to his office and had informed him that one accused Rakesh Kumar, who is also wanted in an NDPS case would come between 08:30 p.m. to 09:00 p.m. near Select City Mall, Saket. He stated that he had informed Inspector Arti Sharma (incharge of the team), who after verifying the information, constituted a raiding team to apprehend the accused Rakesh Kumar. He stated that he reached Select City Mall, Saket at around 08:20 pm,

where he asked 4-5 passersby to join the raid, but none agreed. He stated that due to paucity of time, no notice was served upon the public witnesses. He stated that at about 08:50 pm, one person was coming from the side of Malviya Nagar on foot towards Select City mall. The secret informer identified the person as the accused Rakesh Kumar and he was apprehended by him along with Ct. Gyaneshwar. On interrogation, the person disclosed his name as Rakesh Kumar Dahiya. Thereafter, he was interrogated and his disclosure statement was recorded (Ex. PW20/C), wherein he disclosed his involvement in the case. The accused was arrested vide arrest memo (Ex. PW20/A) and his personal search was taken vide memo (Ex. PW 20/B). Thereafter the accused Rakesh Kumar was taken to SIT, Crime Branch, Sector-18, Rohini, where DD. No. 16 (Ex. PW20/D) was recorded with respect to the proceedings conducted by him. He stated that the accused was presented before the Court of Duty MM, Saket and he had submitted the *kalandara* (Ex. PW20/E) along with all the other documents before the Court of Duty MM. The custody of the accused Rakesh Kumar was then handed over to SI Bhagwan Singh after seeking permission from the Court of Duty MM.

31. The statement of the appellants was recorded under Section 313 of the Cr.PC and they denied the allegations made against them.

32. In their defence, Smt Nisha was examined as DW1. She is the mother of the accused Sheetal (Appellant no. 1). She stated that on

23.04.2012, she was present with her daughter (Sheetal) at their rented house in Khirki Extension, Malviya Nagar. She stated that three-four persons came to their house, took their bags and asked them to sit in an auto. Thereafter, they took them in their vehicle to the police station. She stated that she was released after two hours, however, she was assured that her daughter (Sheetal) would be released in the evening. She alleged that when she visited the police station the next day to enquire about her daughter, she came to know that her daughter Sheetal had been arrested in the present case. She stated that she knew the accused Rakesh Kumar, as he was also residing in the rented accommodation. She denied all the allegations made against her daughter – Sheetal (appellant no. 1).

Submissions

33. Mr Mehta, learned counsel appearing for Rakesh Dahiya submitted that Rakesh Dahiya has been convicted on the allegation that he was at the spot when Sheetal had allegedly purchased cocaine from Giwa Kadeejat. He submitted that the prosecution's case is that Rakesh Dahiya was involved in the selling of drugs outside Delhi. However, no evidence to that effect had been led by the prosecution. He pointed out that Inspector Bhagwan Singh, who was examined as PW18, was handed over the investigation of the case. He testified that on examining the file, he found that the investigation regarding the source of supply of the contraband was pending. He had collected the CDR of the mobile

phone numbers allegedly used by Giwa Kadeejat and Rakesh Dahiya and after going through them, he found that the position of Giwa Kadeejat and Rakesh Dahiya, was at the place of occurrence, that is, near Safdarjung Enclave, Opposite Iris Hotel, New Delhi on 23.04.2012 at about 03:00 p.m. He further stated that he collected the CDR of the mobile phone No. 9704212343, which was allegedly disclosed by Rakesh Dahiya as the mobile phone number of Praveen Kumar, a resident of Hyderabad. According to the prosecution, Rakesh Dahiya used to supply contraband to Praveen Kumar. However, the said phone number was found to be in the name of one Mokhariya Umesh Kumar, resident of District Aadilabad, Andhra Pradesh. He testified that he had proceeded to Aadilabad on 18.08.2012 and Umesh Kumar Mokhariya had met him at Hyderabad Railway Station on 19.08.2012. He testified that he interrogated Umesh Kumar Mokhariya, but found no ground to arrest him in this case.

34. Mr Mehta submitted that in view of the above testimony, Rakesh Dahiya could not be convicted of the offences for which he was charged. Next, he submitted that although he was not representing Sheetal, however, she was also liable to be acquitted as the necessary procedure under Section 42 of the NDPS Act had not been followed. He submitted that the raiding party had been constituted allegedly on an authorisation issued pursuant to the information that Rakesh Dahiya would come at the given spot and purchase narcotics from a Nigerian woman. He submitted that there was no authorisation to search Sheetal or arrest her and there was no information that she was involved in drug

trafficking, in any manner. Therefore, Sheetal could not be searched or apprehended and the action of the raiding team to do so was, wholly illegal. He submitted that even in cases where it is necessary to search a person without authorisation, the information regarding the same is required to be set down in writing within a period of seventy two hours in terms of Section 42(2) of the NDPS Act. However, the prosecution had failed to follow this procedure.

35. Mr Phogat, learned counsel appeared for Sheetal submitted that Sheetal had been convicted only on account of her alleged connection with Rakesh Dahiya. He contended that even if the conviction is accepted, the sentence awarded to Sheetal was harsh and ought to be released and, her sentence ought to be reduced to the period already served.

Reasons and Conclusions

36. The testimony of the witnesses for the prosecution regarding the apprehension of Sheetal at the spot are consistent. There is also no inconsistency in the testimonies of various witnesses concerning the recovery of ten grams of cocaine from Sheetal's possession. Paramjeet Singh (PW9), HC Sanjay Kumar (PW12) and Ct. Rekha (PW4) are consistent in their description of how Sheetal was apprehended and the manner in which the recovery of cocaine was made.

37. The contention that her search is illegal as it falls foul of Section 42 of the NDPS Act, is unpersuasive. No authorisation to search Sheetal or apprehend her was issued. However, she was found at the spot and the raiding team had witnessed a transaction of sale and purchase of the contraband. Further, this transaction had occurred on a public road and therefore, Section 42 of the NDPS Act is inapplicable and no specific authorisation under Section 42 of the NDPS Act is required.

38. The prosecution had also led evidence as to the chain of custody of the contraband (cocaine) recovered from Sheetal. It has also been established from the Chemical Analysis Report that the substance recovered from Sheetal was cocaine. In view of the evidence led by the prosecution, this Court is unable to accept that there is any doubt that Sheetal was apprehended while in possession of ten grams of cocaine.

39. However, this Court is of the view that the sentence awarded to Sheetal is harsh inasmuch as it fails to take into account the circumstances and mitigating factors, which were material to determine the sentence to be awarded. First, there is no evidence to even remotely suggest that Sheetal was engaged in dealing in any drugs. The prosecution has merely established that ten grams of cocaine were recovered from her possession. There is no evidence at all that she intended to sell the said contraband to any other person or that she intended to traffic in the same.

40. Second, while the quantity of cocaine recovered from Sheetal was in excess of small quantity (two grams); it was far below the lower limit of commercial quantity (hundred grams). The person convicted of a contravention involving a small quantity is liable to be punished with rigorous imprisonment for a term, which may extend to one year; whilst a person found in contravention involving a quantity higher than the small quantity but less than the commercial quantity, is liable to be punished with rigorous imprisonment, which may extend to ten years. Given the wide range of the punishment, which could be imposed, it was essential for the Court to award the proper punishment, keeping in view both the punitive and reformatory element. In the present case, it would be evident that Sheetal is not a hardened criminal. Even according to the prosecution, the information received was regarding Rakesh Dahiya being engaged in trafficking drugs. The investigation agency had proceeded on the basis that Rakesh Dahiya would come to purchase drugs from a Nigerian woman to sell the same outside Delhi. It is not their case that Sheetal was involved in any such trade. Further, it is the prosecution's case that while Rakesh Dahiya continued to remain in his car, Sheetal had stepped out to collect cocaine from Giwa Kadeejat and had paid her the money. If the said action is viewed in the context of the case projected by the prosecution, it would imply that she had stepped out to collect cocaine at the instance of Rakesh Dahiya. There is little evidence to the aforesaid effect; but given the prosecution's case that Rakesh Dahiya, and not Sheetal, was involved in the sale and purchase of cocaine, the same was required to be kept in view while imposing the sentence.

41. Third, the Trial Court had imposed the sentence under the assumption that Sheetal and Rakesh Dahiya were also involved in other incidents. The court had expressly rejected the contention that Sheetal and Rakesh Dahiya had been caught in one stray incident. However, concededly, there is no evidence on record to establish that Sheetal was involved or even suspected to be involved in any other incident. In fact, her name did not feature in the secret information received by the concerned police official. Thus, the Trial Court erred in determining the sentence on the basis that Sheetal was involved in other incidents as well.

42. Fourth, the Trial Court had also erred in not considering Sheetal's age. Although, the exact age of Sheetal is not discernible from the record, it is obvious that she would be barely twenty years old at the material time. This is considering that her mother's age was disclosed as forty-two years, when she was examined on 04.05.2017, that is, more than five years after the date of the incident. Sheetal's nominal roll as on 14.01.2020 discloses her age as twenty-eight years. Thus, on the date of her apprehension, she would be barely twenty years old. Given that there was no allegation of her being involved in any other case, the punishment imposed on Sheetal is clearly harsh and in excess of what is warranted.

43. In view of the above, whilst the conviction of Sheetal for committing an offence under Section 21(b) of the NDPS Act is not

interfered with, her sentence is reduced to the period already served. This is considering that she had served more than three years of prison sentence as on date. In addition to the prison sentence, a fine of ₹50,000/- was also imposed on Sheetal. Whilst, this Court does not consider it apposite to reduce the fine; the sentence awarded to her in default of payment of fine is reduced to a period of simple imprisonment for one month. Thus, in the event Sheetal fails to pay the fine of ₹50,000/-, she would serve a further period of simple imprisonment for a period of one month.

44. Insofar as the case of Rakesh Dahiya is concerned, it is seen that there is no evidence whatsoever that he was involved in the trafficking of drugs. Admittedly, no drug was recovered from his possession. It appears that the prosecution had relied heavily on his disclosure statement allegedly made under Section 67 of the NDPS Act. However, the said statement is clearly inadmissible in view of the recent decision of the Supreme Court in *Tofan Singh v. State of Tamil Nadu: 2020 SCC OnLine SC 882*.

45. PW18 had testified that he had proceeded along with HC Narender Kumar, HC Kanwal Singh and Ct. Ram Dass to Aadilabad, Andhra Pradesh to investigate the person to whom Rakesh Dahiya allegedly supplied contraband. It appears from his testimony that the only lead that he had for the said purpose was the disclosure made by Rakesh Dahiya under Section 67 of the NDPS Act (PW18/B). Rakesh

Dahiya had allegedly disclosed that he had been supplying cocaine to one Praveen Kumar, whose phone number was 9704212343. PW18 testified that on further inquiries, it was found that the said phone number was of one Sh. Makhariya Umesh Kumar of District Aadilabad, Andhra Pradesh. Umesh Kumar had met Inspector Bhagwan Singh (PW18) at the Railway Station in Hyderabad and PW18 had interrogated him at the Railway Station. PW18 then testified that after interrogation, he found no ground to arrest Praveen Kumar and he returned to Delhi on 20.08.2012. Thus, concededly, the prosecution could find no evidence of Rakesh Dahiya supplying cocaine to any person. According to the prosecution, Rakesh Dahiya had also disclosed that one Ade used to supply cocaine to him through Giwa Kadeejat and his phone number was 9560187469. However, on investigation, it was found that the said number was registered in the name of Ms. Meenu Tangri. She was examined as PW21 and was confronted with the Airtel prepaid enrolment form. She testified that the photograph on the said form was her photograph, but the said form did not bear her signatures. She further stated that she had never used the said mobile phone (mobile no. 9560187469).

46. In view of the above, there is (a) no evidence as to the source from where Rakesh Dahiya would procure cocaine; (b) there is no evidence that any prohibited substance was ever handed over to Rakesh Dahiya; (c) there is no evidence that Rakesh Dahiya ever supplied cocaine to any person; and (d) there is no evidence that Rakesh Dahiya was ever in possession of the contraband.

47. Thus, the only material against Rakesh Dahiya is that the raiding party had seen him at the spot along with Sheetal. It is also brought in evidence that he had handed over some currency notes to Sheetal and she had handed them over to Giwa Kadeejat along with some currency from her handbag. SI Paramjeet Singh (PW9) testified that Sheetal had handed over some currency to Giwa Kadeejat after taking it out from her bag and after taking some currency notes from Rakesh Dahiya. Ct. Rekha (PW4) also testified to the aforesaid effect. However, HC Sanjay Kumar (PW12) stated that Sheetal had taken “something” from Rakesh. He further stated that it was probably money. Thus, according to the testimony of PW9, PW12 and PW4, Rakesh Dahiya had paid some money to Sheetal, which she had added to the money she had taken out from her purse and handed over the same to Giwa Kadeejat. In addition, there is evidence on record to establish that Rakesh Dahiya and Sheetal were residing in the same premises. According to Sheetal’s mother (who testified as DW1), Rakesh Dahiya was residing in the same premises. Further, Sh. Rakesh Gupta (PW7) testified that he had let out his premises (House No. R-26, Ground Floor, Khirki Extension, Malviya Nagar, Delhi) to Rakesh Dahiya at a rent of ₹15,000/- per month and his wife Sheetal and her mother also resided with him. The motor vehicle of Rakesh Dahiya was also identified. The prosecution has led evidence to show that the said vehicle had been sold to Rakesh Dahiya. Considering the evidence led by the prosecution, this Court is of the view that the prosecution has established (a) that the car bearing registration No. DL 8CT 3159 was in possession of Rakesh Dahiya at the material time; (b) that he had driven to the spot along with Sheetal;

(c) Sheetal had entered into some transaction with Giwa Kadeejat and paid her some money, a part of which was taken from Rakesh Dahiya; and, (d) Giwa Kadeejat had handed over a small packet to Sheetal, which was found to contain cocaine.

48. It is well settled that direct evidence of conspiracy is sometimes difficult to secure and therefore, necessary inferences are required to be drawn from the given circumstances. In the present case, this Court has little doubt that Rakesh Dahiya was aware of the transaction regarding the purchase of cocaine and he had also paid Sheetal some money for the same. In the circumstances, this Court is of the view that there is no doubt that Rakesh Dahiya had abetted and conspired with Sheetal to purchase cocaine from Giwa Kadeejat. Thus, this Court finds no reason to interfere with his conviction for committing an offence punishable under Section 29 of the NDPS Act.

49. Rakesh Dahiya has also been convicted for an offence punishable under Section 25 of the NDPS Act. Section 25 of the NDPS Act reads as under:

“25. Punishment for allowing premises, etc., to be used for commission of an offence.— Whoever, being the owner or occupier or having the control or use of any house, room, enclosure, space, place, animal or conveyance, knowingly permits it to be used for the commission by any other person of an offence punishable under any provision of this Act, shall be

punishable with the punishment provided for that offence.”

50. As is apparent from a plain reading of Section 25 of the NDPS Act, the rigors of the said section will apply only in cases when the owner permits usage of his premises, house, room, enclosure, space, place, animal or conveyance, for the commission of an offence. Thus, the usage of the premises or conveyance must have a direct nexus with the commission of the offence. The words “*used for*” makes it amply clear that such premises, place, conveyance etc. must have an active and direct involvement with the commission of the crime. Such premises, space, conveyance must either be used as instruments for executing the offence or be used in a manner so as to substantially facilitate the commission of an offence punishable under the NDPS Act. An incidental or inconsequential use of the space, premises, conveyance etc. by the person committing an offence punishable under the NDPS Act, would be wholly insufficient, to attract the punitive provision of Section 25 of the NDPS Act.

51. Rakesh Dahiya’s conviction for an offence punishable under Section 25 of the NDPS Act is founded on the fact that he had driven Sheetal in his car to the spot in question. This Court is of the view that his conviction under Section 25 of the NDPS Act, on account of this act, is unsustainable.

52. First of all, it is difficult to accept that the said act amounts to

knowingly permitting the car to be used by another person, Sheetal, for committing an offence. Plainly, Rakesh Dahiya has not permitted Sheetal to use the vehicle for committing the said offence. He was in complete control of the car in question and had driven it to the spot. He was himself using the vehicle. At best, he had permitted Sheetal to sit in his car, but that would not amount to permitting her to use the vehicle for commission of the said offence.

53. Second, this Court is also unable to accept that the vehicle in question (car bearing registration No. DL 8CT 3159) was used for the commission of the said offence. In order to fall within the scope of Section 25 of the NDPS Act, there must be a direct nexus between the usage of the “*house, room, enclosure, space, place, animal or conveyance*” and commission of the offence. Such nexus must be substantial, real and direct; not remote or indirect. The use of the room, space, conveyance etc. must be contemplated to be directly used in executing the offence. A clear distinction must be drawn between usage of a house, room, enclosure, space, place, animal or conveyance for its ordinary use and using the same for the specific purpose of committing an offence. To illustrate the same, let’s consider a hypothetical case where a person travels to a city in a car with the intention and purpose to purchase and consume a banned substance. He drives to the premises/spot where the seller is selling the illicit substance. He steps out of the car; purchases the illicit substance; and consumes it. Undeniably, he has committed an offence punishable under the NDPS Act. But the key question is whether he has used the car to commit the

offence? He could have just as well travelled to the spot in a public transport and committed the offence. Surely, it would be erroneous to suggest that he has used the public transport to commit the offence. In contrast to this, there may be a case where a vehicle is used to transport illicit substance. Plainly, in such a case, the vehicle is used to commit the offence. Merely because an offender uses several articles to go about his activities, does not mean that he has uses such articles for committing an offence.

54. In the present case, Rakesh Dahiya had used the vehicle to drive Sheetal to a spot. He had not used the vehicle for committing an offence so as to fall foul of Section 25 of the NDPS Act. The expression “*use for the commission of an offence*” must be interpreted in a strict and narrow manner, it cannot be interpreted in an expansive manner.

55. In view of the above, the impugned judgment to the extent that it convicts Rakesh Dahiya of committing an offence punishable under Section 25 of the NDPS Act, is set aside.

56. In so far as the sentence awarded to Rakesh Dhaiya is concerned, the Trial Court has erred in proceeding on the basis that Rakesh Dahiya was also involved in other incidents, even though the prosecution has failed to establish any such incident let alone Rakesh Dahiya’s involvement in it. Rakesh Dahiya has already served three years of imprisonment. Considering the above, the age of Rakesh Dhaiya and

the quantity of illicit substance involved, this Court is also of the view that the sentence awarded to Rakesh Dahiya ought to be reduced to the period already served. It is so directed.

57. This Court finds no reason to interfere with the imposition of fine, however, the period of simple imprisonment required to be served by Rakesh Dahiya in default of payment of fine is reduced to a period of one month. In other words, Rakesh Dahiya shall pay the fine of ₹50,000/- as imposed. However, if he defaults in paying the fine, he shall serve simple imprisonment for a further period of one month.

58. The appeals are disposed of in the aforesaid terms. The pending application is also disposed of.

VIBHU BAKHRU, J

MARCH 3, 2021
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